

## **REMARKS**

The Office Action mailed February 12 has been thoroughly reviewed. In response, Applicants submit the attached Statement of Common Ownership and Terminal Disclaimer along with this Request for Reconsideration.

Claims 1-14, 16, and 18-58 are currently pending in the application and subject to examination.

### **Obviousness-type Double Patenting**

All pending claims are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over any of claims 1-49 of U.S. Patent No. 5,968,404 (the '404 patent), claims 1-34 of U.S. Patent No. 6,284,231 (the '231 patent), claims 1-45 of U.S. Patent No. 6,656,923 (the '923 patent) and claims 1-25 of U.S. Patent No. 5,955,093 (the '093 patent) in view of U.S. Patent No. 5,408,022 (the '022 patent).

The Examiner asserts that the allegedly prior art patents claim compositions comprising uncomplexed cyclodextrin (CD), a CD compatible surfactant, and at least one antimicrobial active agent. The Examiner notes that none of the patent documents expressly teach inclusion of a CD-incompatible surfactant, but that the present specification teaches compounds such as cetylpyridinium chloride and dodecyltrimethylammonium bromide, which are described as antimicrobial compounds by the references. In addition, the Examiner asserts that the '022 patent teaches that certain antimicrobial agents, including cetylpyridinium chloride, are known as, for example, cationic surfactants, such that the CD-incompatible surfactants of the instant claims are the antimicrobial agents of the references.

Applicants maintain that the instant claims are patentably distinguishable over the references in combination or alone, and in view of the '022 patent. However, in order to expedite prosecution and allowance, Applicants submit the attached Terminal Disclaimer in compliance with 37 C.F.R. § 1.321 (c) or (d), which acts to overcome the nonstatutory double patenting rejection in view of the Statement of Common Ownership, also attached hereto. Accordingly, the double patenting rejection has been overcome and reconsideration is respectfully requested.

### **35 U.S.C. § 103**

Claims 1-14, 16, and 18-58 are rejected under 35 U.S.C. § 103 as being obvious and unpatentable over claims 1-49 of U.S. Patent No. 5,968,404 (the '404 patent), claims 1-34 of U.S. Patent No. 6,284,231 (the '231 patent), claims 1-45 of U.S. Patent No. 6,656,923 (the '923 patent) and claims 1-25 of U.S. Patent No. 5,955,093 (the '093 patent). Specifically, the Examiner sets forth the same rationale as in the double patenting rejection, above, and states that it would have been obvious for one of ordinary skill in the art at the time of the instant invention to employ antimicrobial agents such as cetylpyridinium chloride as an antimicrobial agent in the composition of the above patents to achieve both an antimicrobial effect and also a surfactant effect.

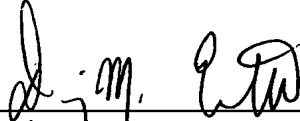
Applicants submit that the instant claims are nonobvious and patentable over the disclosures of the asserted references. However, once again, to expedite prosecution and to effectuate an allowance, Applicants submit the attached Terminal Disclaimer and Statement of Common Ownership, which act to eliminate the references as prior art with respect to the present application.

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The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment, to Deposit Account No. 04-1133.

Applicants believe this to be a complete and comprehensive response to the double patenting and 35 U.S.C. § 103 rejections set forth in the February 12, 2007 Office Action. Hence, reconsideration and allowance of claims 1-14, 16, and 18-58 is respectfully requested. The Examiner is invited to contact the agent below to discuss any issues that may remain outstanding at his earliest convenience in order to expedite prosecution and allowance.

Respectfully submitted,

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